



109904

STATE OF NEW YORK: DEPARTMENT OF ENVIRONMENTAL CONSERVATION

In the Matter of the Development
and Implementation of a Remedial
Investigation, Feasibility Study and
Implementation of a Remedial Program
for an Inactive Hazardous Waste
Disposal Site, Under Article 27,
Title 13, of the Environmental
Conservation Law of the State of
New York (the "ECL") by

ORDER
ON
CONSENT

BROOME COUNTY
and
GAF CORPORATION

FOILABLE <input checked="" type="checkbox"/>		BERA	FILE SECTION
SITE NAME			<input checked="" type="checkbox"/> I
SITE CODE			<input type="checkbox"/> II
SUB SECTIONS			<input type="checkbox"/> III
PRO. ELEMENT			<input type="checkbox"/> IV
OPERABLE UNIT NO. DESC.			<input type="checkbox"/> V
DRAFT OR FINAL			<input type="checkbox"/> VI

Index #T010687

Respondents.

RECITALS

R-1. The New York State Department of Environmental Conservation (the "Department") is responsible for the enforcement of Article 27, Title 13, of the Environmental Conservation Law of the State of New York (the "ECL"), entitled "Inactive Hazardous Waste Disposal Sites".

R-2. Respondent, Broome County (the "County"), is a municipality which owns property in the Town of Colesville, north of Doraville, New York, known as the Colesville Landfill (the "Site"). A map of the Site is attached hereto and is hereby incorporated into this Order on Consent (the "Order") as Exhibit "A". Broome County operated the Colesville Landfill from 1971 to 1984 and has owned the Site

since 1971.

R-3. Town of Colesville (the "Town"), is a municipality which owned the Site from 1965 to 1969 and operated the landfill thereat from 1965 to 1971.

R-4. Respondent, GAF Corporation ("GAF"), is a corporation doing business in the State of New York that did manufacture film and graphic products at a facility in Binghamton, New York.

R-5. Malchak Garbage Service ("Malchak"), does business in the State of New York which in the past included the transport of industrial and hazardous waste.

R-6. Tri-Cities Barrel Corporation ("Tri-Cities") is a New York Corporation doing business at Fenton, New York. Tri-Cities' business includes the manufacture and reconditioning of steel drums and barrels.

R-7. The Department alleges that Respondents Broome County and GAF Corporation and the Town of Colesville, Malchak Garbage Service and Tri-Cities Barrels and other as yet unidentified parties are "the owner[s] and/or person[s] responsible for the disposal of hazardous wastes" at the Site pursuant to ECL Article 27 Title 13.

R-8. The Department further alleges that the Site is an inactive hazardous waste disposal site, as that term is defined in ECL Section 27-1301(2).

R-9. Based on the information set forth in reports prepared by Wehran Engineering Inc. on behalf of the County, and on the Department's files, the Commissioner of the Department of Environmental Conservation (the "Commissioner") has determined that the Site and the hazardous wastes disposed thereat constitute a significant threat to the environment.

R-10. Pursuant to ECL Section 27-1313(3)(a), "whenever the Commissioner finds that hazardous wastes at an inactive hazardous waste disposal site constitute a significant threat to the environment, he may order the owner of such site and/or any person responsible for the disposal of hazardous wastes at such site (i) to develop an inactive hazardous waste disposal site remedial program, subject to the approval of the department, at such site, and (ii) to implement such program within reasonable time limits specified in the order."

R-11. The objective of this Order shall be to develop an inactive hazardous waste disposal site remedial program for the Site, as described in this Order and as approved by the Department, and to implement such program within the

time limits specified hereinafter, in order to achieve the following goals:

- a) Determine the areal extent and the vertical distribution of hazardous waste disposed of at the Site;
- b) Evaluate the on- and off-Site impacts of the hazardous waste on the public health and/or the environment; and
- c) Contain and alleviate any present or potential harm to the public health and/or the environment caused by hazardous wastes at the Site.

R-12. Respondents, having waived their right to a hearing herein as provided by law, have consented to the issuance of this Order without any adjudication of fact or law. Respondents' consent to this Order and their subsequent compliance with its terms does not constitute, and shall not be construed as, an admission of liability of any kind or an admission by Respondents of any fact or conclusion of law or of the applicability or inapplicability of any law.

ORDER

Based upon the foregoing, IT IS HEREBY ORDERED that certain actions be taken to abate the release and threat of

release of hazardous waste at and from the Site into the environment. A Remedial Program, as set forth in greater detail below, must be implemented at the Site.

IT IS FURTHER ORDERED THAT:

I. Respondents shall commence implementation of the "Supplemental Remedial Investigation" as described in the Work Plan attached hereto as Exhibit B within 30 days of the effective date of this Order or May 1, 1987 whichever is later.

II. All investigations, proposals, reports, plans, remedial programs, and supplements and revisions thereto required by this Order shall address both on-Site and off-Site contamination caused by the disposal of hazardous wastes at the Site, and shall be prepared, designed and executed in accordance with Requisite Remedial Technology. As used in this Order, Requisite Remedial Technology means engineering, scientific and construction principles and practices subject to the Department's approval which (a) are technically feasible, and (b) will most effectively identify, mitigate and eliminate any present or potential threat to the environment posed by the disposal of hazardous and industrial wastes at the Site.

III. As used herein, "hazardous wastes" shall mean hazardous wastes, any hazardous constituents thereof, and

any toxic degradation products of such wastes and of such constituents.

IV. Not later than the effective date of this Order, Respondents shall select a technical coordinator, to be known as the "Technical Coordinator", and shall submit the name, address, and telephone number of the Technical Coordinator to the Department.

V. As appropriate during the course of the Remedial Program at the Site, Respondents or their consultants or contractors, acting through the Technical Coordinator, may confer with the Department concerning the Remedial Program. Based upon new circumstances or new information not in the possession of the Department on the date of this Order, the Technical Coordinator may request, in writing prior to any modification, approval of such modification of the Work Plan. If approved by the Department, such modification shall be implemented by Respondents.

VI. If there is a dispute between Respondents and the Department as to any matter under this Order, including but not limited to any dispute concerning the terms of any proposal, report or plan, the matter shall be settled in accordance with the following procedures:

A. Either party, upon written notice to the other,

may request the Commissioner of Environmental Conservation to appoint an Administrative Law Judge ("ALJ") to settle the dispute.

B. In all proceedings hereunder:

1. The parties shall be Respondents and the Department.
2. In addition to those powers conferred by Article 3 of the State Administrative Procedure Act, the ALJ shall have the power to:
 - a. set the time and place of the proceeding;
 - b. hear arguments;
 - c. permit cross-examination; and
 - d. question parties and receive exhibits.
3. All proceedings conducted pursuant to this Paragraph shall be stenographically recorded. The ALJ shall arrange for a stenographic transcript to be made as soon as possible after conclusion of the proceeding and for the original and two copies of the transcript to be delivered to the ALJ at the expense of the Respondents.
4. The ALJ shall prepare, no later than thirty (30) working days after receipt of the transcript of the proceeding, a written summary of the documentation and

testimony received during the proceeding and a recommended decision. The summary and recommendation shall be delivered to the Department's representative and forwarded by certified mail, return receipt requested, to Respondents.

5. The ALJ's recommended decision shall become the final determination of the Commissioner unless, within ten (10) working days from receipt of the recommended decision, either Respondents or the Department objects in writing. Any objections shall be submitted in writing to the ALJ with a copy to the other party.

6. If Respondents or the Department timely objects to the recommended decision, the ALJ shall refer the matter to the Commissioner for final determination.

7. The final determination of the Commissioner shall be made within ten (10) days of receipt of a party's objections to the ALJ's recommended decisions.

8. Respondents may, provided such is commenced within thirty (30) days of the final determination of the Commissioner, initiate judicial review of such determination pursuant to Article Seventy-Eight (78) of the Civil Practice Laws and Rules of the State of New York.

VII. On or before sixty (60) days after the completion

of the field work required in the Remedial Investigation, Respondents shall submit to the Department a Supplemental Remedial Investigation Report (the "Report") as described in the Work Plan, founded upon its performance of the Remedial Investigation.

VIII. At any time prior to the approval of the Report, the Department reserves the right to request a clarification, appropriate modification or amplification of the Remedial Investigation and Report by Respondents to address the relevant off-Site areas related to hazardous waste disposal if the Department determines that further off-Site investigation is necessary as a result of the Department's review of data generated by the Remedial Investigation as it might be related to the Respondents' disposal and treatment of hazardous waste at the Site. The Department and Respondents will seek to resolve any deficiencies or requested changes expeditiously through discussion and clarification. Should the parties disagree on such a request, the matter shall be submitted for determination pursuant to Paragraph VI of this Order.

IX. Within sixty (60) days after its receipt of the Report, the Department shall determine if the Remedial Investigation was conducted and the Report prepared in accordance with the terms, provisions and conditions of this Order, and shall provide written notification to Respondents

of its approval or disapproval of the Report.

a) If the Department disapproves of the Report, the Department shall notify Respondents in writing within thirty (30) days of the Department's objections. Within thirty (30) days after its receipt of notice of disapproval, Respondents shall revise the Report and/or revise or supplement the Remedial Investigation in accordance with the terms, provisions and conditions of this Order and shall submit to the Department its Report which has been revised after consideration of the Department's objections (the "Revised Report").

b) Within fifteen (15) days after its receipt of the Revised Report, the Department shall determine if the Revised Report is in accordance with the terms, provisions and conditions of this Order and shall provide written notification to Respondents of its approval or disapproval of the Revised Report.

c) If the Department disapproves the Revised Report, the Respondents shall try to resolve any deficiencies or requested changes expeditiously through discussion and clarification.

d) Should the parties disagree on the disapproval of the Revised Report, the matter shall be submitted for

determination pursuant to Paragraph VI of this Order.

e) The Report or the Revised Report, whichever is approved by the Department, or as approved in Paragraph VI above, shall become incorporated in and shall become a part of this Order, and shall be attached hereto as Exhibit "C". Said Report shall hereafter be referred to as the "Approved Report".

X. Within ninety (90) days after receipt of the Department's approval of the Report, or within such greater period as the Department may allow for good cause shown, Respondents shall submit to the Department a feasibility study (the "Feasibility Study") in accordance with the terms and conditions of the Work Plan as annexed hereto as Exhibit "B".

XI. Within sixty (60) days after its receipt of the Feasibility Study, the Department shall determine if the Feasibility Study is prepared in accordance with the terms, provisions and conditions of this Order, and shall provide written notification of its approval or disapproval.

a) If the Department disapproves the Feasibility Study, the Department shall notify Respondents in writing within thirty (30) days of the Department's objections. Within thirty (30) days after its receipt of notice of

disapproval, Respondents shall revise the Feasibility Study and shall submit to the Department a Feasibility Study which has been revised after consideration of the Department's objections (the "Revised Feasibility Study").

b) Within fifteen (15) days after its receipt of the Revised Feasibility Study, the Department shall determine if the Revised Feasibility Study is in accordance with the terms, provisions, and conditions of this Order, and shall provide written notification to Respondents of its approval or disapproval of the Revised Feasibility Study.

c) If the Department disapproves the Revised Feasibility Study, the Department and Respondents shall try to resolve any deficiencies or requested changes expeditiously through discussion and clarification.

d) Should the parties disagree on the disapproval of the Revised Feasibility Study, the matter shall be submitted for determination pursuant to Paragraph VI of this Order.

e) The Feasibility Study or the Revised Feasibility Study, whichever is approved by the Department, or as approved in Paragraph VI above, shall be incorporated in and made a part of this Order, and shall be attached hereto as Exhibit "D". Such Feasibility Study shall hereafter be

referred to as the "Approved Feasibility Study".

XII. Within one hundred and twenty (120) days after receipt of the Department's approval of the Feasibility Study, or within such greater period as the Department may allow for good cause shown, Respondents shall submit to the Department a remedial design and engineering report (the "Remedial Design") in accordance with the Work Plan, which is attached as Exhibit B.

XIII. Within sixty (60) days after its receipt of the Remedial Design, the Department shall determine if the Remedial Design was prepared in accordance with the terms, provisions and conditions of this Order and shall provide written notification of its approval or disapproval.

a) If the Department disapproves the Remedial Design, the Department shall notify Respondents in writing within thirty (30) days of the Department's objections. Within thirty (30) days after its receipt of notice of disapproval, Respondents shall revise the Remedial Design and shall submit to the Department a Remedial Design which has been revised after consideration of the Department's objections (the "Revised Remedial Design").

b) Within fifteen (15) days after its receipt of the Revised Remedial Design, the Department shall determine

if the Revised Remedial Design is in accordance with the terms, provisions and conditions of this Order, and shall provide written notification to the Respondents of its approval or disapproval of the Revised Remedial Design.

c) If the Department disapproves of the Revised Remedial Design, the Department and Respondents shall try to resolve any deficiencies or requested changes through discussion and clarification.

d) Should the parties disagree on the disapproval of the Revised Remedial Design, the matter shall be submitted for determination pursuant to Paragraph VI of this Order.

e) The Remedial Design or the Revised Remedial Design, whichever is approved by the Department, or as approved in Paragraph VI above, shall become incorporated in and made a part of this Order, and shall be attached hereto as Exhibit "E". Such Remedial Design shall hereafter be referred to as the "Approved Remedial Design".

XIV. Within such period as may be allowed therefor by the Approved Remedial Design, Respondents shall complete construction pursuant to the Approved Remedial Design, and within forty-five (45) days thereafter, shall submit to the Department "as-built" drawings and a certification that

construction was completed in accordance with the Approved Remedial Design. Such certification shall be by a licensed professional engineer registered in the State of New York.

XV. Within forty-five (45) days after receipt of the "as-built" drawings and certification, the Department shall review the same and provide comments to Respondents.

a) In the event that the Department shall not be satisfied with the quality and completeness of construction, the Department shall enter into discussion with Respondents to resolve in good faith any differences and Department requests for supplementary work.

b) Should the parties disagree as to any supplementary work, the matter shall be submitted for determination pursuant to Paragraph VI of this Order.

c) If the Department acknowledges that the implementation is complete and in accordance with the Approved Remedial Design, then, unless a Supplementary Remedial Program is required pursuant to Paragraph XXVI hereof, and except for the requirements of Paragraph XIX hereof, such acknowledgement shall constitute a full and complete satisfaction and release of each and every claim, demand, remedy or action whatsoever against Respondents, their officers and directors, which the Department has or

may have pursuant to Article 27, Title 13, of the ECL relative to or arising from the disposal of hazardous waste at the Site.

d) This satisfaction and release shall inure only to the benefit of Respondents, their officers, directors and employees, with respect to the aforesaid matter.

XVI. Nothing contained in this Order shall be deemed to limit the liability of any person who is not a party to this Order or to adversely affect any right, claim, interest, defense, or cause of action of any party hereto with respect to any person who is not a party to this Order, or with respect to any other persons whom the Department has notified in relation to the Site.

XVII. The Department shall ensure that the United States Environmental Protection Agency, Region II ("EPA") is fully advised of each phase of remediation of the Site, including but not limited to the phases outlined in this Consent Order. The Department shall forward to EPA copies of all necessary data, documents, proposals, reports, studies, and correspondence that pertain to remediation of the Site and action taken towards remediation in accordance with the provisions of the "CERCLA Enforcement Protocol" between the Department and EPA (attached hereto and incorporated herein as Exhibit F) which provides a framework for the

relationship between the Department and EPA with regard to actions brought under the Federal Comprehensive Environmental Response Compensation and Liability Act ("CERCLA") concerning hazardous waste sites in New York. (The October 15, 1986 letter from Lynn Wright to Joseph Forti is attached hereto as Exhibit "G").

XVIII. The right of the Department to enforce the terms of this Order shall be consistent with the terms of the release contained herein.

XIX. Notwithstanding any provision contained in this Order to the contrary, Respondents shall maintain and provide for physical security at the Site and conduct a monitoring program thereat in accordance with the Approved Remedial Design ("Post-Closure Period"). Respondents shall have the right, upon written notification to the Department, to seek discontinuation of such monitoring program upon a showing that such monitoring is no longer necessary. Any dispute concerning same shall be submitted for determination pursuant to Paragraph VI of this Order. During such Post-Closure Period, Respondents shall provide the Department with periodic monitoring reports as set forth in the Approved Remedial Design.

XX. The Department shall have the right to obtain for the purpose of comparative analysis "split samples" or

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"duplicate samples", at the Department's option, of all substances and materials sampled by Respondents pursuant to this Order. As used herein: "split samples" shall mean whole samples divided into aliquots; "duplicate samples" shall mean multiple samples that are collected at the same time from exactly the same location, using the same sampling apparatus, collected in identical containers that are prepared identically, filled to the same volume, and thereafter identically handled and preserved.

XXI. The Department and Respondents shall each have access to and shall share all raw data, field notes, logs and chemical analyses generated during the investigation as soon as they become available, except that the Department shall not provide results of analyses of split samples until Respondents' results for the corresponding portions of such samples have been provided to the Department.

XXII. Respondents shall provide notice to the Department of any excavating, drilling or sampling to be conducted pursuant to the terms of this Order. Such notice shall be provided at least five (5) working days in advance of such activities to such person as is designated for such purpose by the Department.

XXIII. a) Respondents shall permit, at all reasonable times, any duly designated officer, employee, consultant,

contractor or agent of the Department to enter upon the Site or areas in the vicinity of the Site which may be under the control of Respondents and any areas necessary to gain access thereto for inspection purposes and for the purpose of making or causing to be made such sampling and tests as the Department deems necessary and for ascertaining Respondents' compliance with the provisions of this Order.

b) Notwithstanding the foregoing, the Department reserves whatever rights it may have under ECL § 27-1309.

XXIV. Respondents shall obtain whatever permits, easements, rights-of-way, rights-of-entry, approvals or authorizations are necessary in order to perform the Field Investigation and all of Respondents' other obligations pursuant to this Order. The Department shall assist and expedite Respondents' efforts whenever and however possible in obtaining permits, easements, rights-of-way, rights-of-entry, approvals or authorizations.

XXV. Respondents shall not suffer any penalty under any of the provisions, terms or conditions hereof, or be subject to any proceedings or actions for any remedy or relief, if their activities under this Order are delayed by an act of God, war, riot, conduct of a third party, or the refusal of a governmental authority to issue required permits, provided such conduct or refusal does not result from Respondents'

negligence, willful misconduct or failure to meet whatever standards are established pursuant to law or regulation for obtaining any such required permit. Respondents shall immediately notify the Department in writing when it obtains knowledge of any such condition and may request an appropriate extension or modification of the provisions hereof if appropriate.

XXVI. In the event that either the Department or Respondents find that it is not feasible to comply with any of the elements of the Remedial Program, with the requirements and goals of this Order or with the provisions of the Approved Remedial Design at any time prior to or during the Post-Closure Period, one shall immediately notify the other by telephone and in writing of such present or prospective failure. Immediately upon such discovery or immediately upon its receipt of written notification, both Department and Respondents shall investigate to determine the causes thereof and any appropriate solutions therefor. If appropriate, Respondents shall develop a Supplementary Remedial Program (the "SRP") in an effort to avoid or remedy failure, and shall submit the SRP, which shall include, if appropriate, a written scope of work and time schedule for implementation, to be submitted to the Department within sixty (60) days of the mutually resolved failure or prospective failure by written notification. For the purpose of this paragraph, a substantial increase in cost

may be a factor considered in determining feasibility.

XXVII. Within thirty (30) days of receipt of the SRP, the Department shall provide written notification to Respondents' of its approval or disapproval of the SRP. If the Department approves the SRP, Respondents shall implement the elements of the SRP in accordance with the SRP. If the Department disapproves the SRP, the Department shall notify Respondents in writing of the Department's objections.

a) Within thirty (30) days after receipt of notice of disapproval, Respondents shall revise the SRP in accordance with the terms, provisions and conditions of this Order, and shall submit to the Department an SRP which has been revised after consideration of the Department's objections (the "Revised SRP").

b) Within fifteen (15) days of receipt of the Revised SRP, the Department shall provide written notification to Respondents of its approval or disapproval of the Revised SRP. If the Department approves the Revised SRP, Respondents shall implement the elements of the Revised SRP in accordance with the Revised SRP.

c) If the Department disapproves the Revised SRP, the Respondents shall try to resolve any deficiencies or requested changes expeditiously through discussion and

clarification.

d) Should the parties disagree on the disapproval of the Revised SRP, the matter shall be submitted for determination pursuant to Paragraph VI of this Order.

e) The SRP or Revised SRP, whichever is approved by the Department or as approved in Paragraph VI (the "Approved SRP"), shall become incorporated in and made a part of this Order and shall be attached hereto as Exhibit "H".

XXVIII. Respondents shall exercise good faith in completing construction and other elements of the Approved SRP in an expeditious fashion as provided by the provisions and schedules herein.

XXIX. Within forty-five (45) days of the completion of the construction elements of the Approved SRP, Respondents shall submit to the Department "as-built" drawings and shall submit certification by a licensed professional engineer registered in the State of New York that the construction elements were completed in accordance with the Approved SRP.

XXX. Within forty-five (45) days of the receipt of the "as-built" drawings, the Department shall advise Respondents in writing as to whether the implementation of the construction and other elements of the SRP are complete and

in accordance with the provisions of the Approved SRP.

a) If the Department determines that the implementation of the construction or other elements are not in accordance with the Approved SRP, the Department and Respondents shall seek to resolve any basis for deviation from the Approved SRP.

b) In the event the parties cannot agree, the matter shall be submitted for determination pursuant to Paragraph VI of this Order.

c) If the Department acknowledges that the implementation is complete in accordance with the Approved SRP then, except for the requirements of Paragraphs XIX and XXVI hereof, such acknowledgement shall constitute a full and complete satisfaction and release of each and every claim, demand, remedy or action whatsoever against Respondents, their officers and directors, which the Department has or may have pursuant to Article 27, Title 13 of the ECL, relative to or arising from the disposal of hazardous waste at the Site.

d) This satisfaction, release and covenant not to sue those Respondents who enter into this Consent Order for any further legal responsibility relating to the Site shall inure only to the benefit of Respondents, their officers,

directors and employees, with respect to the aforesaid matter.

e) Nothing herein shall be construed as barring, diminishing, adjudicating or in any way affecting any legal or equitable rights or claims, actions, suits, causes of action or demands whatsoever that the Department may have against anyone other than Respondents, their officers, directors and employees.

XXXI. The failure of Respondents to comply with any provision of this Order shall constitute a default and a failure to perform an obligation under this Order and under the ECL. Failure to comply shall mean Respondents' refusal to comply barring any event contemplated by the force majeure provisions set forth in paragraph XXV above.

XXXII. Nothing contained in this Order shall be construed as barring, diminishing, adjudicating or in any way affecting (1) any legal or equitable rights or claims, interests, defenses, actions, suits, causes of action or demands whatsoever that the Department or the Respondents may have against anyone other than the parties to this Order and their directors, officers, employees, servants, agents, successors and assigns; or (2) the Department's right to enforce, at law or in equity, the terms and conditions of this Order against Respondents, their directors, officers,

employees, servants, agents, successors and assigns.

XXXIII. After receipt of Respondents' consent to this Order, the Department will announce the availability of this Order to the public for review and comment. The Department will accept comments from the public for a period of thirty (30) days after such announcement. The Department will also announce that a public informational meeting will be held during the thirty-day comment period at which members of the public may present their comments. At the end of the comment period, the Department will review all such comments and will either:

a) Determine that this Order should be made effective in its present form, in which case Respondents will be so notified in writing and the Order shall become effective upon the Commissioner's signature; or

b) Determine that modification of this Order is necessary, in which case Respondents will be informed as to the nature of any such required modifications and, if Respondents agree to such modifications, the Order shall be so modified and shall become effective upon the subscription thereto by Respondents and signature by the Commissioner.

c) In the event that the Respondents and the Department are unable to agree on modifications required by

the Department in response to public comments, this Order may be withdrawn by the Department. In such an event, the Department explicitly reserves the rights to take any action and pursue any remedy to which it may be entitled by law. Respondents explicitly reserve all rights to contest such action.

XXXIV. If, for any reason, Respondents desire that any provision of this Order, including the Exhibits attached hereto, be changed at any time, Respondents shall make written application therefor to the Commissioner setting forth reasonable grounds for the relief sought.

XXXV. Within thirty (30) days after the effective date of this Order, Respondent County shall file a Declaration of Covenants and Restrictions with the real property records of the Broome County Clerk's Office for the purpose of providing notice of this Order to all potential future purchasers of any portion of the Site. Said Declaration must indicate that any successor in title to any portion of the Site shall be responsible for implementing the provisions of this Order.

XXXVI. In the event that Respondent County proposes to convey the whole or any part of its ownership interest in the Site, Respondent County shall, not less than thirty (30) days prior to the consummation of such proposed conveyance,

notify the Department and any other Respondent in writing of the identity of the transferee and of the nature and date of the proposed conveyance. In advance of such proposed conveyance, that Respondent County shall notify the transferee in writing, with a copy to the Department and any other Respondent, of the applicability of this Order.

XXXVII. a) All communication required hereby to be made between the Department and Respondents shall be made in writing and transmitted by United States Postal Service, return receipt requested, or hand delivered to the address listed hereinunder.

b) Communication to the Department shall be made as follows:

(1) Two copies to the Division of Solid and Hazardous Waste, Room 208, 50 Wolf Road, Albany, New York 12233.

(2) Two copies to Division of Environmental Enforcement, Room 105, 50 Wolf Road, Albany, New York 12233.

(3) One copy to the Regional Director, Region 7, 7481 Henry Clay Boulevard, Liverpool, New York 13088.

c) Communication to Respondent GAF shall be made as follows:

(1) One copy to Irving Kagan, Senior Vice

President and General Counsel, GAF Corporation, 1361 Alps Road, Wayne, New Jersey 07470.

(2) One copy to Anthony J. Ten Braak, GAF Corporation, 1361 Alps Road, Wayne, New Jersey 07470.

(3) One copy to A. Patrick Nucciarone, Hannech Weisman, 4 Becker Farm Road, Roseland, New Jersey 07068.

d) Communication to Respondent Broome County shall be made as follows:

(1) One copy to Carl S. Young, Broome County Executive, Broome County Office Building, Government Plaza, P.O. Box 1766, Binghamton, New York 13902.

(2) One copy to John E. Murray, Broome County Attorney, Law Department, 6th Floor, Broome County Office Building, 44 Hawley Street, Binghamton, New York 13901.

(3) One copy to David Donoghue, P.E., Department of Public Works, Broome County Office Building, 44 Hawley Street, Binghamton, New York 13901.

e) The Department and Respondents respectively reserve the right to designate other or different addresses on notice to the other.

XXXVIII. No informal advice or guidance by the Department's officers or employees or representatives upon any plan, report, proposal, study or other document, or modifications or additions thereto, submitted by Respondents to the

Department, shall relieve Respondents of any obligation to obtain the Department's formal written approval of the same unless such advice or guidance constitutes formal approval, as provided by a writing from the Department.

XXXIX. Notwithstanding the execution of this Order, the Department and Respondents shall continue reasonable efforts to identify and obtain participation and/or contribution to remediation of the Site, including the Department's administrative costs, from other individuals and entities that may be "owner[s] and/or person[s] responsible for the disposal of hazardous wastes" at the Site. However, regardless whether or not additional Respondents to this proceeding can be identified or whether or not participation in and contribution to remediation of the Site can be obtained from such additional Respondents, those Respondents who subscribe to this Order shall continue to be responsible for all functions, duties and costs incurred under and by reason of this Order.

XL. The provisions of this Order shall be deemed to bind Respondents and their officers, directors, agents, servants, employees, successors and assigns.

XLI. Respondents shall indemnify and hold harmless the State of New York, the Department, and its officers and employees and representatives, for all claims, suits,

actions, damages and costs of every name and description arising out of or resulting from Respondents' performance or attempted performance of its obligations hereunder, and due to the negligent or willful actions or omissions of Respondents and their respective officers, directors, employees, servants and agents, and successors and assigns.

XLII. Notwithstanding the provisions of Paragraph R-12 above, in any action or proceeding or litigation brought to enforce this Order by or on behalf of the State of New York, the Department or Commissioner, Respondents agree not to contest the validity of this Order.

XLIII. In consideration of the undertakings to be performed by the County pursuant to this Order, the County shall be reimbursed by the Hazardous Waste Remedial Fund (the "Fund") for 75% of its share of the eligible costs for the development and implementation of the hazardous waste disposal site remedial program described herein on the condition that:

- (1) the County's share shall not exceed 50% of such eligible costs of the remedial program;
- (2) the County shall take reasonable measures to recover money from its insurance carriers for expenditures made pursuant to this Order;
- (3) the County shall consult with and obtain the approval of the Department prior to settling any claims or

causes of actions which it may have against its insurance carriers or any other parties for such expenditures made by the County pursuant to this Order;

(4) the County shall notify the Department within thirty (30) days of its receipt of any money pursuant to subparagraph 2 above and the amount of the Fund share shall be recalculated by the Department; and

(5) the County shall, within thirty (30) days of the Department's determination of the recalculated amount, pay to the Department for deposit in the design and construction account of the Fund established under § 97(b) of the State Finance Law, the amount by which the State payment actually exceeds the County's recalculated share.

XLIV. Nothing herein contained shall be deemed to limit or otherwise affect in any manner the Commissioner's power to order the summary abatement of conditions and activities according to ECL § 71-0301 and 6 NYCRR, Part 620, or to take any action authorized by law and not inconsistent with the terms, provisions and conditions of this Order.

XLV. The provisions hereof shall constitute the complete and entire Order between Respondents and the Department concerning the Site. No terms, conditions, understandings

or agreements purporting to modify or vary the terms hereof shall be binding unless made in writing and subscribed by the party to be bound.

DATED: , New York
 , 1986

HENRY G. WILLIAMS
Commissioner
New York State Department of
Environmental Conservation

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained in this Order.

GAF CORPORATION

By: Irving Kagan

Title: Senior Vice President, Secretary, and General Counsel

Date: January 3, 1987

STATE OF NEW JERSEY)

) s.s.:

COUNTY OF PASSAIC)

On this 8th day of January, 1987, before me personally came Irving Kagan, to me known, who being duly sworn, did depose and say that he resides in New York City; that he is the Senior Vice President of the GAF CORPORATION corporation described in and which executed the foregoing instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Notary Public

Notary Public of New Jersey
My Commission Expires May 6, 1990

CONSENT BY RESPONDENT

Respondent hereby consents to the issuing and entering of this Order, waives its right to a hearing herein as provided by law, and agrees to be bound by the provisions, terms and conditions contained in this Order.

BROOME COUNTY

By: Carl S. Young

Title: COUNTY EXECUTIVE

Date: JAN. 7, 1987

STATE OF NEW YORK)
COUNTY OF BROOME) S.S.:

On this 7th day of JANUARY, 1987 before me personally came Carl S. Young, to me known, who being duly sworn, did depose and say that he resides in BINGHAMTON, N.Y.; that he is the COUNTY EXECUTIVE of the COUNTY OF BROOME, the municipality described in and which executed the foregoing instrument; that he knew the seal of said County; that the seal affixed to said instrument was the seal of said County; that it was so affixed by order, resolution or authority of the Legislature of said County, and that he signed his name thereto by like order, resolution or authority.

Mary A. Kappa
Notary Public

11/30/88